

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0735, Heather Constantineau v. Windsor Pond Condominium Owners' Association & a., the court on December 6, 2005, issued the following order:

The petitioner, Heather Constantineau, appeals an order of the trial court denying her request for a declaratory judgment and for an award of damages and attorney's fees. The sole issue raised on appeal is whether the trial court erred in finding her liable for repairs required after a sinkhole caused damage to her "stand alone" condominium unit. We affirm.

A condominium association's legal documents form a contract governing the legal rights between the association and property owners; the interpretation of those documents is a question of law that we review *de novo*. Nordic Inn Condo. Owners' Assoc. v. Ventullo, 151 N.H. 571, 575 (2004). We will uphold the trial court's findings of fact unless they are unsupported by the evidence or erroneous as a matter of law. *Id.* at 586.

In this case, the trial court found that the damage was to the foundation of the unit owned by the petitioner and to the driveway. The court also ruled that the petitioner was responsible for any damage caused to the yard adjacent to her unit. We address each issue in turn.

In her brief, the petitioner concedes that she is responsible for the foundation of her unit. She appears to argue that because the sinkhole appeared in the limited common area of the condominium association, the association is responsible for the damage it caused. The trial court found that the sinkhole was caused by finer soils washing down to fill voids under the foundation and concluded that the petitioner was responsible for its repair. This finding was supported by the record. Accordingly, we find no error.

The trial court next addressed liability for any damage caused to the yard adjacent to the petitioner's unit. Section 3(e)(ii) of the condominium declaration provides: "Certain portions of the Limited Common Area, as shown on the site plan, constitute the 'yard' appurtenant to the unit. This area will be maintained by the unit owner. Such maintenance will include, but will not be limited to, snow removal, and lawn and landscaping care." The petitioner argues that the import of this language is to limit the owner's responsibility to routine maintenance and that, by implication, extensive repairs are the responsibility of the association.

At trial, the petitioner conceded that the sinkhole was located in her limited common area. Article V, 4(a) of the condominium bylaws provides that the board of directors "shall not be responsible for the maintenance, repair and replacement of the limited common area of each unit." Construing the declaration and bylaws together as required by RSA 356-B:13, we conclude that the trial court correctly found that the petitioner was responsible for the

repairs to her yard. It is clear that the bylaws assign responsibility to the condominium owner that exceeds the routine maintenance asserted by the petitioner. While Rule 4 of the condominium rules provides that repair of the limited common area is the responsibility of the association, it directly conflicts with the condominium bylaws. Article III, section 1 of the bylaws authorizes the board of directors to adopt such rules as deemed necessary “provided that such Rules shall not be in conflict with the Condominium Act, the Declaration or these Bylaws.”

The trial court also found that the petitioner was responsible for repairs to her driveway. Because the driveway was also part of the limited common area on the petitioner’s unit, we find no error in the court’s ruling.

Although the petitioner also appears to argue that because the association repaired retaining walls on the limited common area, it should have repaired the damage caused by the sinkhole, she cites no authority in support of her contention. Given the language of the condominium documents in the case before us, we are unpersuaded by this argument.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox
Clerk